

Senate Engrossed

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**KEN BENNETT
SECRETARY OF STATE**

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Senate
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First Regular Session
2009

CHAPTER 128

SENATE BILL 1062

AN ACT

AMENDING SECTION 38-1101, ARIZONA REVISED STATUTES; RELATING TO LAW
ENFORCEMENT AND PROBATION OFFICERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-1101, Arizona Revised Statutes, is amended to
3 read:

4 38-1101. Law enforcement officers; probation officers; right to
5 representation; right to evidence on appeal; change
6 of hearing officer or administrative law judge;
7 burden of proof; definitions

8 A. If an employer interviews a law enforcement officer or probation
9 officer and the employer reasonably believes that the interview could result
10 in dismissal, demotion or suspension:

11 1. The law enforcement officer or probation officer may request to
12 have a representative of the officer present at no cost to the employer
13 during the interview. The law enforcement officer or probation officer shall
14 select a representative who is available on reasonable notice so that the
15 interview is not unreasonably delayed. The representative shall participate
16 in the interview only as an observer. Unless agreed to by the employer, the
17 representative shall be from the same agency and shall not be an attorney.
18 The law enforcement officer or probation officer shall be permitted
19 reasonable breaks of limited duration during any interview for telephonic or
20 in person consultation with others, including an attorney, who are
21 immediately available. An employer shall not discipline, retaliate against
22 or threaten to retaliate against a law enforcement officer or probation
23 officer for requesting that a representative be present or for acting as the
24 representative of a law enforcement officer or probation officer pursuant to
25 this paragraph.

26 2. Before the commencement of any interview described in this section,
27 the employer shall provide the law enforcement officer or probation officer
28 with a written notice informing the officer of the specific nature of the
29 investigation, the officer's status in the investigation, all known
30 allegations of misconduct that are the reason for the interview and the
31 officer's right to have a representative present at the interview.

32 3. The employer may require the law enforcement officer or probation
33 officer to submit to a polygraph examination if the officer makes a statement
34 to the employer during the investigation that differs from other information
35 relating to the investigation that is known to the employer and reconciling
36 that difference is necessary to complete the investigation. If a polygraph
37 examination is administered pursuant to this paragraph, the employer or the
38 person administering the polygraph examination shall make an audio recording
39 of the complete polygraph procedure and provide a copy of the recording to
40 the law enforcement officer or probation officer.

41 4. THE LAW ENFORCEMENT OFFICER OR PROBATION OFFICER, AT THE CONCLUSION
42 OF THE INTERVIEW, IS ENTITLED TO A PERIOD OF TIME TO CONSULT WITH THE
43 OFFICER'S REPRESENTATIVE AND MAY MAKE A STATEMENT NOT TO EXCEED FIVE MINUTES
44 ADDRESSING SPECIFIC FACTS OR POLICIES THAT ARE RELATED TO THE INTERVIEW.

1 B. Subsection A does not require the employer to either:
2 1. Stop an interview to issue another notice for allegations based on
3 information provided by the ~~employee~~ LAW ENFORCEMENT OFFICER OR PROBATION
4 OFFICER during the interview.
5 2. Disclose any fact to the ~~employee~~ LAW ENFORCEMENT OFFICER OR
6 PROBATION OFFICER or the ~~employee's~~ LAW ENFORCEMENT OFFICER'S OR PROBATION
7 OFFICER'S representative that would impede the investigation.
8 C. Subsection A, paragraphs 1 and 2 do not apply to an interview of a
9 law enforcement officer or probation officer that is:
10 1. In the normal course of duty, counseling or instruction or an
11 informal verbal admonishment by, or other routine or unplanned contact with,
12 a supervisor or any other law enforcement officer or probation officer.
13 2. Preliminary questioning to determine the scope of the allegations
14 or if an investigation is necessary.
15 3. Conducted in the course of a criminal investigation.
16 4. Conducted in the course of a polygraph examination.
17 D. In any appeal of a disciplinary action by a law enforcement officer
18 or probation officer, the parties shall exchange copies of all relevant
19 documents and a list of all witnesses pursuant to the following time periods
20 and requirements:
21 1. Within three business days after the employer's receipt of a
22 written request from the law enforcement officer or probation officer for a
23 copy of the investigative file that is accompanied by a copy of the filed
24 notice of appeal, the employer shall provide a complete copy of the
25 investigative file as well as the names and home or work mailing addresses of
26 all persons interviewed during the course of the investigation.
27 2. No later than five business days before the appeal hearing, or, if
28 the appeal hearing is scheduled more than twenty days after the notice of
29 appeal, no later than ten business days before the appeal hearing, the
30 employer and the law enforcement officer or probation officer shall exchange
31 copies of any documents that may be introduced at the hearing and that have
32 not previously been disclosed.
33 3. No later than five business days before the appeal hearing, or, if
34 the appeal hearing is scheduled more than twenty days after the notice of
35 appeal, no later than ten business days before the appeal hearing, the
36 employer and the law enforcement officer or probation officer shall exchange
37 the names of all witnesses who may be called to testify. A witness may be
38 interviewed at the discretion of the witness. The parties shall not
39 interfere with any decision of a witness regarding whether to be interviewed.
40 An employer shall not discipline, retaliate against or threaten to retaliate
41 against any witness for agreeing to be interviewed or for testifying or
42 providing evidence in the appeal.
43 E. It is unlawful for a person to disseminate information that is
44 disclosed pursuant to subsection D to any person other than the parties to
45 the appeal and their lawful representatives for purposes of the appeal of the

1 disciplinary action. This subsection does not prohibit the use of the
2 information in the hearing or disclosure pursuant to title 39, chapter 1,
3 article 2.

4 F. The employer or the law enforcement officer or probation officer
5 may seek a determination by the hearing officer, administrative law judge or
6 appeals board hearing the appeal regarding any evidence that the employer or
7 the law enforcement officer or probation officer believes should not be
8 disclosed pursuant to subsection D because the risk of harm involved in
9 disclosure outweighs any usefulness of the disclosure in the hearing. In
10 determining whether evidence will be disclosed, the hearing officer,
11 administrative law judge or appeals board may perform an in camera review of
12 the evidence and may disclose the material subject to any restriction on the
13 disclosure, including the closing of the hearing or the sealing of the
14 records, that the hearing officer, administrative law judge or appeals board
15 finds necessary under the circumstances.

16 G. In any appeal of a disciplinary action by a law enforcement officer
17 or probation officer in which a single hearing officer or administrative law
18 judge has been appointed to conduct the appeal hearing, the law enforcement
19 officer or probation officer or the employer may request a change of hearing
20 officer or administrative law judge. In cases before the office of
21 administrative hearings, ~~or where~~ IF the employer is a county with a
22 population of two hundred fifty thousand or more persons or a city with a
23 population of sixty-five thousand or more persons, on the first request of a
24 party, the request shall be granted. All other requests, including any
25 subsequent requests in cases before the office of administrative hearings,
26 ~~or where~~ IF the employer is a county with a population of two hundred fifty
27 thousand or more persons or a city with a population of sixty-five thousand
28 or more persons, may be granted only on a showing that a fair and impartial
29 hearing cannot be obtained due to the prejudice of the assigned hearing
30 officer or administrative law judge. The supervisor or supervising body of
31 the hearing officer or administrative law judge shall decide whether a
32 showing of prejudice has been made.

33 H. A party who violates subsection D or E, unless the violation is
34 harmless, shall not be permitted to use that evidence at the hearing, except
35 on a showing of good cause. The hearing officer or administrative law judge,
36 on a showing of good cause, may grant the opposing party a continuance,
37 otherwise limit the use of the evidence or make such other order as may be
38 appropriate.

39 I. The burden of proof in an appeal of a disciplinary action by a law
40 enforcement officer or probation officer shall be on the employer.

41 ~~J. If the employer amends, modifies, rejects or reverses the decision~~
42 ~~of a hearing officer, administrative law judge or board, the employer shall~~
43 ~~state the employer's reasons for the amendment, modification, rejection or~~
44 ~~reversal.~~

1 J. EXCEPT WHERE A STATUTE OR ORDINANCE MAKES THE ADMINISTRATIVE
2 EVIDENTIARY HEARING THE FINAL ADMINISTRATIVE DETERMINATION, AN EMPLOYER OR A
3 PERSON ACTING ON BEHALF OF AN EMPLOYER MAY AMEND, MODIFY, REJECT OR REVERSE A
4 DECISION MADE BY A HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD
5 AFTER A HEARING WHERE THE LAW ENFORCEMENT OFFICER OR PROBATION OFFICER AND
6 THE EMPLOYER HAVE BEEN EQUALLY ALLOWED TO CALL AND EXAMINE WITNESSES,
7 CROSS-EXAMINE WITNESSES, PROVIDE DOCUMENTARY EVIDENCE AND OTHERWISE FULLY
8 PARTICIPATE IN THE HEARING IF THE DECISION WAS ARBITRARY OR WITHOUT
9 REASONABLE JUSTIFICATION AND THE EMPLOYER OR PERSON ACTING ON BEHALF OF THE
10 EMPLOYER STATES THE REASON FOR THE AMENDMENT, MODIFICATION, REJECTION OR
11 REVERSAL.

12 K. AN EMPLOYER SHALL NOT INCLUDE IN THAT PORTION OF THE PERSONNEL FILE
13 OF A LAW ENFORCEMENT OFFICER OR PROBATION OFFICER THAT IS AVAILABLE FOR
14 PUBLIC INSPECTION AND COPYING ANY INFORMATION ABOUT AN INVESTIGATION UNTIL
15 THE INVESTIGATION IS COMPLETE OR THE EMPLOYER HAS DISCONTINUED THE
16 INVESTIGATION. IF THE LAW ENFORCEMENT OFFICER OR PROBATION OFFICER HAS
17 TIMELY APPEALED A DISCIPLINARY ACTION, THE INVESTIGATION IS NOT COMPLETE
18 UNTIL THE CONCLUSION OF THE APPEAL PROCESS.

19 ~~K.~~ L. This section does not preempt agreements that supplant, revise
20 or otherwise alter the provisions of this section, including preexisting
21 agreements between the employer and the law enforcement officer or probation
22 officer or the law enforcement officer's or probation officer's lawful
23 representative association.

24 ~~L.~~ M. For the purposes of this section:

25 1. "Appeal" means a hearing before a state or local merit board, a
26 civil service board, an administrative law judge or a hearing officer.

27 2. "Disciplinary action" means the dismissal, demotion or suspension
28 for more than twenty-four hours of a law enforcement officer or probation
29 officer that is authorized by statute, charter or ordinance and that is
30 subject to a hearing or other procedure by a local merit board, a civil
31 service board, an administrative law judge or a hearing officer.

32 3. "Investigative file" means the law enforcement agency's complete
33 report and any attachments detailing the incidents leading to the
34 disciplinary action.

35 4. "Law enforcement officer" means:

36 (a) An individual, other than a probationary employee, who is
37 certified by the Arizona peace officer standards and training board, other
38 than a person employed by a multi-county water conservation district.

39 (b) A detention officer or correction officer, other than a
40 probationary employee, who is employed by this state or a political
41 subdivision of this state.

42 5. "Probation officer" means a probation officer or surveillance
43 officer, other than a probationary employee, who is employed by this state or
44 a political subdivision of this state.

APPROVED BY THE GOVERNOR JULY 13, 2009.

FILED IN THE OFFICE OF THE ^{- 4 -} SECRETARY OF STATE JULY 13, 2009.